ments was apparently a hire purchase agreement with the 2nd defendant, a finance company in Singapore who was to finance the purchase of the car. But a few months after the delivery of the car the plaintiff on receiving the invoice decided to pay the full purchase price of the car. He made this payment to the 1st defendant who gave him a receipt. On his inquiry regarding the documents he had signed, the plaintiff was told by the 1st defendant that those documents would be destroyed. The truth of it all, however, was that the 1st defendant had sent the documents to the 2nd defendant and had received the full amount under the hire purchase agreement. Without the knowledge of either the plaintiff or the 2nd defendant, the 1st defendant used this money for his own purpose and apparently made certain payments to the 2nd defendant as though these were payments by the plaintiff. But when certain instalments fell in arrears the plaintiff received notice from the 2nd defendant. It was then that he realised the document he signed had not been destroyed and that the registration card was in the possession of the 2nd defendant. He accordingly protested to the 2nd defendant saying that he did not receive any money from them, which was true, and that he himself had paid the full purchase price of the car, which was also true. But the 2nd defendant maintained that regardless of what happened they were the legal owners of the car under the terms of the hire purchase agreement and refused the plaintiff's demand for the registration card. Hence this action for a declaration of ownership and the return of the registration card.

In the action the 1st defendant was sued as an agent and the 2nd defendant as his principal. For obvious reason the 1st defendant did not enter appearance, but no step was taken by the plaintiff to obtain judgment against him by default. The 2nd defendant, however, entered appearance and filed a defence disputing the plaintiff's right of ownership to the car. At the conclusion of the trial judgment was entered for the plaintiff against both defendants and, as far as I am aware, there is no appeal against this judgment. The judgment was made in common form and as regards costs the terms of the formal order are expressed thus:—

"The 1st and 2nd defendants do pay to the plaintiff the costs of and incidental to this action."

The plaintiff's bill of costs has been taxed and the 2nd defendant has paid half of it. On the 2nd defendant's refusal to pay the other half the plaintiff protested saying that he is entitled to recover his full taxed costs from the 2nd defendant. In the event both the plaintiff and the 2nd defendant applied for a ruling which I think should have been made by the taxing master himself. However, as both parties have elected to adopt this course of action, each will have to pay his costs of the application.

The question raised in the applications was considered in *Stumm* v. *Dixon*,[1] in which there was a dissenting judgment. This case was referred to in *Mallal's* Supreme Court Practice at page 1087. No other authority on the point was or could be cited. In the judgment of Lord Esher M.R. the rule was stated in these words:—

"In my opinion the true rule is this: when an action is tried against two or more defendants, and any defendants separates in his defence, and the judgment is against all, the law is that each of them is liable for the damage awarded by the judgment, and each of them is liable to the plaintiff for all costs taxed on his behalf as properly incurred by him in the maintenance of his action, except as to costs caused to him by so much of the separate defence of any defendant as is, and can only be, a defence for that defendant as distinguished from other defendants. With regard to such costs so caused to the plaintiff, he is entitled by law to recover them against that defendant alone who has so caused him to incur them."

In terms of this rule the plaintiff in the present action is entitled to turn to any of the two defendants for his full taxed costs. The exception to this rule applies only when there is a separate defence. In point of fact there was only one defence and that was the defence filed by the 2nd defendant. No separate defence was filed by the 1st defendant as to bring this case within the exception to this rule. In the event it must be ruled that the plaintiff is entitled to recover the full costs from the 2nd defendant. In fairness to the 2nd defendant it must be stated here that their argument is that there was a finding of fact that the 1st defendant was not the agent of the 2nd defendant, and on that finding it is only right that costs should be equally apportrioned between the two defendants. With respect I cannot see the force of this argument by the 2nd defendant. It might be different — I say no more than this — if it had come from the 1st defendant. Accordingly it must be ruled that the plaintiff is entitled to have the remaining half of the taxed costs from the 2nd defendant.

Order accordingly.

CHAN HUA ENG v. LIM BENG HUI

[F.C. (Azmi C.J. (Malaya), Suffian & MacIntyre F.JJ.) October 6, 1968]

[Johore Bahru—Federal Court Civil Appeal No. X5 of 1968]

Practice and Procedure — Account stated — Action on — Absence of admission by defendant that he owed money.

Failure to reply — Whether amounts to an admission.

One of the essential ingredients of an account stated is an admission by the defendant that he owed the money.

A failure to reply to a note in a bill to the effect that if the amount was disputed the plaintiff should be notified does not amount to an admission.

FEDERAL COURT.

H. N. McLeod (*John Ang Soon Ho* with him) for the appellant.

M. S. Miranda for the respondent.

The oral judgment of the court was delivered by —

Azmi C.J. (Malaya): A judgment was entered into in this case on the basis that this was an account stated. On examination of the pleadings and averments in the affidavits, we find no justification for this conclusion.

One of the essential ingredients of an account stated is an admission by the defendant that he owed the money. It was contended before us that a failure to reply to a note in the bill sent, to the effect that if the amount was disputed, the plaintiff should be notified, amounted to an admission. We do not agree with this.

In the circumstances of this case we do not consider the account in this case as an account stated. The appeal is allowed with costs. The judgment is set aside and the case remitted for hearing.

Case remitted for hearing.

Solicitors: *Sault, Keith Seller & Co.; M. S. Miranda.*

GAN KOK LIONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) October 9, 1968]
[Raub — Criminal Appeal No. 2 of 1968]

Criminal Law and Procedure — Prevention of crimes — Restricted residence — Order for — Whether 2nd order can be made after expiry of 1st order — Conclusiveness of Minister's order — Prevention of Crimes Ordinance, 1959, s. 15(2)(f) and (4).

Criminal Law and Procedure — Trial — Cross-examination of accused and his witnesses — Whether frequency and nature of interruption by president amount to irregularity.

The appellant was convicted by the sessions court on a charge under section 15(2)(f) of the Prevention of Crimes Ordinance and was sentenced to 2 years imprisonment. He appealed on two grounds: (a) that the second order of restricted residence made by the Minister of Interior was invalid as it was made after and not during the currency of the first order and (b) that the learned president of the sessions court had subjected the appellant to severe cross-examination thus preventing a fair trial.

Held, dismissing the appeal: (1) the Minister was perfectly entitled to make the second order that was made and it was conclusive and not assailable by the courts;

(2) looking at the case as a whole the trial was not conducted in an irregular manner by reason of the frequency and nature of the interruptions by the president of the sessions court. There was therefore no reason to interfere with his findings.

Cases referred to:—

(1) *R.* v. *Gilson & Cohen* (1944), 29 Cr. App. R. 174 p. 181.

(2) *R.* v. *Cain* (1936), Cr. App. R. 204 at p. 205.

(3) *R.* v. *Bateman* (1946), 31 Cr. App. R. 106 at p. 112.

(4) See *Clewer* (1953), 37 Cr. App. R. 37.

CRIMINAL APPEAL.

Tara Singh Sidhu for the appellant.

Yusof bin Ahmad (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: The appellant was convicted by the president, sessions court, Raub, on a charge under section 15(2)(f) and punishable under section 15(4) of the Prevention of Crimes Ordinance, 1959, and was sentenced to two years' imprisonment.

The facts do not appear to the court to have presented any features of difficulty. On 29th January 1962 the Menteri Dalam Negri* made an order placing the appellant under restricted residence within the limits of the Mukim of Batang Melaka, Jasin District, Melaka, for a period of two years and subjected him to certain specified conditions, one of which was to remain indoors in the house or place in which he was to reside between the hours of 8 p.m. and 6 a.m. This order lapsed two years later, and on 26th November 1965 the Menteri Dalam Negri made a fresh order placing the appellant under restricted residence for a period of 3 years and subjected him to certain specified conditions, namely, that he was required to reside within the limits of the Mukim of Kuala Sungei Bahru in the District of Alor Gajah, Melaka, and to remain indoors in the house or place in which he was to reside within the hours of 10 p.m. and 6 a.m. On 13th May 1966, that is, during the currency of that order, the Menteri Dalam Negri varied the condition with regard to residence, namely, that he was required to reside in the Mukim of Raub in the administrative district of Raub, Pahang.

The appellant was duly removed to Raub and he informed the O.C.P.D. Raub that he intended to stay in a rented room on the first floor of house No. 8, Jalan Lipis, Sempalit, and he has resided there ever since. The police regularly checked on him at his residence to see whether he was observing the conditions enforced against him. That was done by the police who went on rounds, calling out his name, whereupon he appeared and answered to their call. On 16th

* Minister of the Interior.